

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRANCESCO ROSARIO MARCHESE,

Plaintiff,

-against-

DISMISSAL ORDER
20-CV-0098(JS) (ARL)

NASSAU COUNTY JAIL; NU HEALTH;
VERA FLUDD, Sheriff of the Nassau
County Jail;

Defendants.

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APPEARANCES

For Plaintiff: Francesco Rosario Marchese, pro se
19-A-4427
Ulster Correctional Facility
P.O. Box 800
Napanoch, New York 12458

For Defendants: No appearances.

SEYBERT, District Judge:

On January 6, 2020, incarcerated pro se plaintiff Francesco Rosario Marchese ("Plaintiff") filed a Complaint in this Court pursuant to 42 U.S.C. § 1983 ("Section 1983") against the Nassau County Jail, NU Health, and Nassau County Sheriff Vera Flood. (Compl., D.E. 1.) Plaintiff also filed an application to proceed in forma pauperis. (See IFP Mot., D.E. 2.) On or around March 20, 2020, Plaintiff filed an Amended Complaint. (Am. Compl., D.E. 8.)

On May 13, 2020, the Court issued a Memorandum and Order granting Plaintiff's request to proceed in forma pauperis, sua sponte dismissing his claims without prejudice, and granting leave

to file a second amended complaint within 60 days from the date of the Order. (May 13, 2020 Order, D.E. 9 at 15.) The Court warned that “[i]f Plaintiff does not file a Second Amended Complaint within the time allowed, judgement shall enter without further notice and this case will be marked CLOSED.” (Id.) Because Plaintiff mailed documents in an envelope from the Moriah Shock Incarceration Correctional Facility (the “Moriah Facility”), the Clerk of the Court mailed Plaintiff a copy of the Order at the Moriah Facility and the Ulster Correctional Facility, his address of record. (See D.E. 9 at 6). On May 26, 2020, the Clerk entered a notation that mail sent to Plaintiff at the Moriah Facility was returned as undeliverable. (Notice, D.E. 11.)

On July 27, 2020, the Court issued an Electronic Order noting that “[m]ore than 60 days have elapsed since May 13, 2020 and Plaintiff has not filed a second amended complaint nor has he otherwise communicated with the Court.” (July 27, 2020 Elec. Order.) Given his pro se status, the Court granted Plaintiff an additional 45 days from July 27, 2020 to file a Second Amended Complaint. The Court warned Plaintiff that “his failure to timely comply with this Electronic Order will result in the dismissal of the Amended Complaint without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).” (Id.) The Clerk of the Court mailed a copy of the July 27, 2020 Electronic Order and the May 13, 2020 Memorandum and Order to Plaintiff at

his address of record, the Ulster Facility, and to his attention at the Moriah Facility.

The final deadline has expired and Plaintiff has not filed a Second Amended Complaint nor has he otherwise communicated with the Court. Moreover, there is no indication that the most recent mailings to Plaintiff at the Ulster and Moriah Facilities were returned as undeliverable. Accordingly, this case is DISMISSED WITHOUT PREJUDICE for failure to prosecute. See FED. R. CIV. P. 41(b); see also Brow v. City of N.Y., 391 F. App'x 935, 936-37 (2d Cir. 2010).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is DENIED for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962). The Clerk of the Court is directed to mail a copy of this Order to the pro se Plaintiff at his address of record and to his attention at the Moriah Shock Incarceration Correctional Facility, P.O. Box 901, 65 Burnhart Lane, Mineville, New York, 12956. The Clerk of the Court is further directed to mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
JOANNA SEYBERT, U.S.D.J.

Dated: September 21, 2020
Central Islip, New York